

(1974) 05 AHC CK 0025
In the Allahabad High Court
Case No : Special Appeal No. 260 of 1973

Ganga Prasad

APPELLANT

Vs

Sri Asadullah and Others

RESPONDENT

Date of Decision : 22-05-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Municipalities Act, 1916 — Section 113(2)

Citation : AIR 1974 All 396

Hon'ble Judges : D.S. Mathur, C.J;H.N. Seth, J

Bench : Division Bench

Advocate : A.P. Singh, Shanti Bhushan and S.C. Khare, for the Appellant; V.N. Khare and D.S. Singh, for the Respondent

Final Decision : Allowed

Judgement

Seth, J.—Ganga Prasad has come up in appeal against the judgment of a learned Single Judge of this Court, dated 15th November, 1973, dismissing his petition for relief under Article 226 of the Constitution. In that petition, Ganga Prasad prayed for a writ of mandamus and claimed that the respondents, who were either members of the Municipal Board, Faridpur, or claimed to be such members, be directed not to take part in a meeting that had been convened for 16th September, 1973, for considering the motion of no-confidence against the petitioner.

2. General election for electing members of the Municipal Board took place on 30th May, 1971. In that election 15 persons, including Sri Nathu Lal, were declared elected as members of the Board Subsequently, in the month of June, 1973, the petitioner (Ganga Prasad), who was an outsider was elected as the President of the Board. The total strength of the Board thus was 16 i.e. 15 members and a President. After election of members, election petitions were filed, challenging the election of Nathu Lal and Asadullah. However, in this case we are concerned only with the controversy arising as a result of Nathu Lal's

election. Election of Nathu Lal was challenged on the ground that he was not eligible to seek election for a seat reserved for scheduled caste. Election petition, challenging the election of Nathu Lal, was allowed on 21st May, 1973, and after setting aside his election, the Tribunal declared a casual vacancy. Being aggrieved, Nathu Lal filed writ petition No. 4089 of 1973 before this Court and obtained the following interim order on -16th July, 1973.

"Issue notice. Stay operation of the impugned order dated 21-5-1973, meanwhile."

In that petition Nathu Lal neither impleaded the President, nor the Municipal Board, nor the District Magistrate, Ba-reilly, as a party. It appears that in the meantime, some members of the Board contemplated initiation of proceedings for expressing no confidence in the petitioner and for ousting him from office and the petitioner suspected that Nathu Lal was one of such persons. Accordingly, on 16th August, 1973, the petitioner, with a view to prevent Nathu Lal from participating in any move to oust him from office, filed an application in writ petition No. 4089 of 1973, praying that he be impleaded as a party and that the interim order dated 16th July, 1973, be vacated. Learned counsel appearing for Nathu Lal took time for opposing the prayer made in the aforesaid application. In the meantime, on the same date, i.e. 16th August, 1973, 8 members of the Board delivered to the District Magistrate, a notice of their intention to move a motion of no-confidence against the petitioner. Consequently, a meeting for considering the motion of no-confidence against the petitioner was convened for 16th September, 1973. Application made by the petitioner on 16th August, 1973, for being impleaded as a party in writ petition No. 4089 of 1973 and for vacating the stay order dated 16th July, 1973, was, after being opposed by Nathu Lal, rejected on 3rd September, 1973, on the ground that he was not a necessary party to those proceedings. Thereafter, on 5-9-1973, the petitioner filed a petition under Article 226 of the Constitution, praying that Nathu Lal be prevented from participating in the meeting which had been convened for considering the motion of no-confidence against the petitioner, as his election had already been set aside and he was not competent to act as member of the Board. The petitioner also made an application for interim relief. This court permitted Nathu Lal to participate in the meeting scheduled for 16th September, 1973, but directed that until further orders, the presiding officer should not declare the result of that meeting. In due course, the meeting for considering the motion of no-confidence against the petitioner was held on 16th September, 1973, but as directed by this Court, its result was not announced. When the writ petition came up for final hearing, it was urged on behalf of the petitioner that its decision should be postponed till such time as writ petition No. 4089 of 1973, filed by Nathu Lal is not decided. According to him, if that petition was dismissed, it would conclusively establish that Nathu Lal was not competent to participate in the meeting held on 16th Sept., 1973, and the motion of no-confidence could not, in law, be carried against the petitioner because of his vote. The learned single Judge held that in view of the interim order dated 16th July, 1973, in writ

petition No. 4089 of 1973 on 16th September, 1973, Nathu Lal was fully competent to participate in the meeting convened for considering the motion of no-confidence against the petitioner and the fact that the petition filed by him is ultimately dismissed and it is found that his election had been rightly set aside will not in any way affect the validity of the proceedings in that meeting. Accordingly, the learned single Judge refused to adjourn the hearing and dismissed the writ petition. Being aggrieved, the petitioner filed the present special appeal and prayed that the judgment of the learned Single Judge be set aside and the petition filed by him be allowed.

3. It appears that after the writ petition filed by the petitioner was dismissed on 15th November, 1973, the result of the meeting held on 16th September, 1973, was declared on 22nd November, 1973. It was announced that the motion had been carried by 9 votes to 8 and the casual vacancy occurring in the office of the Municipal Board was also notified u/s 56 of the Municipalities Act on 22nd December, 1973. The petitioner then moved an application in the present special appeal and got the writ petition amended. He claimed a further relief that the motion of no-confidence, passed in the meeting held on 16th September, 1973 and communicated to him on 22nd November, 1973, should also be quashed.

4. It may be mentioned at this stage that at the time of the hearing of this appeal, we were informed that writ petition No. 4089 of 1973, filed by Nathu Lal, in which the interim order dated 16th July, 1973, had been passed, has since been dismissed and this court has held that his election had been rightly set aside by the Election Tribunal as he was not entitled to contest on a seat reserved for Scheduled Caste. Learned counsel for Nathu Lal informed us that a special appeal against the judgment in writ petition No. 4089 of 1973 is also pending before this Court. It was suggested that this appeal may be heard along with the special appeal, filed by Nathu Lal, but the learned counsel appearing for Nathu Lal objected to this suggestion and urged that this appeal should be heard and disposed of without waiting for a decision in Nathu Lal's case. For the purposes of this appeal, therefore, we will proceed on the footing that subsequent to the decision of the writ petition giving rise to this appeal, the writ petition No. 4089 of 1973, filed by Nathu Lal stands dismissed and that this court has affirmed the decision of the Election Tribunal, setting aside Nathu Lal's election.

5. Main question that arises for consideration in this case is about the effect that this Court's interim order dated 16th July, 1973, in writ petition No. 4089 of 1973, staying the operation of the order dated 21st May, 1973, passed by the Election Tribunal, had on Nathu Lal's right to participate in the meeting for considering the motion of no-confidence held on 16th September, 1973. It is submitted on behalf of Nathu Lal, which submission has found favour with the learned Single Judge, that the result of the order dated 16th July, 1973, staying the operation of the order dated 21st May, 1973, was that so long as that order stood, everyone had to proceed on the footing that the order dated 21st May,

1973, setting aside Nathu Lal's election and declaring casual vacancy did not exist. Accordingly, Nathu Lal was entitled to act as a member on 16th September, 1973, when the meeting for considering the motion of no-confidence against the petitioner was held. Even if the stay order dated 16th July, 1973, stood vacated when writ petition No. 4089 of 1973 was ultimately dismissed, such vacation of the stay order could not have a retrospective operation so as to invalidate the resolution passed in the meeting held on 16th September, 1973. The submission made on behalf of the appellant, on the other hand, is that the stay order dated 16th July, 1973, could not in law, and in fact did not, confer upon Nathu Lal a right to participate in the meeting held on 16th September, 1973, which right he had already lost as a result of his election being set aside specially when the order setting aside his election has been affirmed by this Court. Nathu Lal was thus not competent to participate in the meeting held on 16th September, 1973 and any motion of no-confidence carried because of his vote would be illegal. The interim order dated 16th July, 1973, could not, in these circumstances, be so construed so as to confer upon Nathu Lal a right which he did not possess under the law.

6. In this connection, it will be useful to refer to a Division Bench decision of this Court in Special Appeal No. 865 of 1972 (1962 ?) decided on 8th April, 1962. That Special Appeal had been filed against the judgment of a Single Judge since reported in 1963 (7) F LR 30 in two connected petitions, Narottam Saran v. State and Abdul Kayum v. State. That decision has been relied upon not only by the learned Single Judge for supporting his judgment but also by learned counsel for both the parties in support of their respective arguments. In that case a meeting for considering a motion of no-confidence against Abdul Kayum, the President of the Municipal Board, had been fixed for 3rd October, 1962. On 1st October, 1962 two members of the Board, Narottam Saran and Radhey Shyam, filed a petition under Article 226 of the Constitution alleging that according to their information, the State Government was going to make an order for their suspension so that they may be disabled from participating in the meeting scheduled for 3rd October, 1962. They prayed that the State Government should be restrained from making any such order. They also made an alternative prayer that if the State Government had already passed such an order its operation be stayed. The writ petition was listed for admission on 3rd October, 1962, when the Standing Counsel produced the file of the State Government which indicated that the orders for suspending Narottam Saran and Radhey Shyam had already been passed in Government files on 1st October, 1962, but till then the same had not been communicated to the two members. After perusing the Government files this Court admitted the writ petition of Narottam Saran and made the following order :--

"Until further orders, the order of the State Government dated October 1, 1972, suspending pending enquiry Norottam Saran and Radhey Shvam from the office of the Members of the Municipal Board, shall remain inoperative and the judicial officer appointed to preside over the meeting to be held today at 3 p.m. (Munsif,

Amroha) for considering the motion of no-confidence against the President, is directed to allow Narottam Saran and Radhey Shyam to participate in the said meeting and to cast their vote for or against the said no-confidence motion."

Narottam Saran and Radhey Shyam, armed with aforesaid order of the High Court, participated in the meeting for considering the motion of no-confidence against Abdul Qayum on 3rd October, 1962, and contributed to its being carried. Abdul Qayum then filed a writ petition before the High Court, questioning the validity of the no-confidence motion on the ground that Narottam Saran and Radhey Shyam had already been suspended and as such they were debarred from exercising their rights as members of the Board. Any resolution expressing no-confidence against the petitioner, passed as a result of their vote was illegal. Both the petitions, namely, that filed by Narottam Saran and another as also that filed by Abdul Qayum, were listed together for hearing before a learned Single Judge. The petition filed by Narottam Saran and Radhey Shyam was got dismissed as having become infructuous and the stay order dated 3rd October, 1962, was vacated with effect from the date of dismissal of the writ petition. The petition filed by Abdul Qayum was also dismissed on the ground that the resolution of no-confidence passed against him on 3rd October, 1962, was not vitiated by reason of the fact that Narottam Saran and Radhey Shyam who had been suspended by State Government on 1st October, 1962, participated in the meeting. Abdul Qayum then filed a special appeal. It was urged on his behalf that Narottam Saran and Radhey Shyam had been suspended under the orders of the State Government. They were incompetent to vote in the meeting for considering the motion of no-confidence and the interim order passed by this Court could not validate their votes. In support of this submission learned counsel relied upon the general principle that interim orders made by a High Court cannot confer any validity on invalid acts. It could merely maintain the status quo. Accordingly, the stay order made by the learned Single Judge could not have the effect of validating the votes cast by Radhey Shyam and Narottam Saran, which, after it was found that the order suspending them, was correct, were obviously invalid. Consequently, the resolution expressing no-confidence against Abdul Qayum was vitiated. Learned Judges, who heard the special appeal, accepted the proposition that if a state of thing exists in which some act or position as it exists, is illegal, interim order made by the Court will not cure that illegality and give that thing or act a legal basis. They, however, observed that the aforementioned proposition did not apply to the facts of the case before them. They pointed out that merely because a suspension order was made in the files of the Government, it did not mean that the two members stood suspended even before that order was communicated to them. Accordingly, the effect of the interim order was that the State Government was incapacitated from serving the suspension order on the two members. The two members of the Municipal Board, factually as also in law, continued to be members of the Board, entitled to exercise all the powers as such, till they were actually suspended. Since in that case the operation of the order passed by the State Government had been

stayed before the suspension order was served upon the two members, the Government had been incapacitated from serving that order. So long as the suspension order was not served, the true legal position was that the two members continued to be the members of the Board and they could exercise their rights as such members. No question of curing any illegality or giving a legal basis to an illegal act or thing, on the basis of the interim order passed by the High Court, arose. It will thus be seen that in that case the court expressed a clear opinion that any interim order passed by the High Court cannot provide a legal basis for an act or thing which would otherwise be illegal. One more argument advanced by the learned counsel for Abdul Qayum in that case was that once an interim order was vacated it should be taken as if it never existed. Accordingly, after the interim order was vacated, it should be taken that Narottam Saran and Radhey Shyam were not competent to function as members on the date on which the meeting for considering the motion of no-confidence was held. This plea was also rejected by the Division Bench and it was held that when the interim order was subsequently vacated, it did not mean that it was never passed or that it never existed. The order vacating the interim order was non-existent even prior to the date on which it was actually vacated.

7. In the case of Ved Singh Pradhan Vs. Assistant Sub-Divisional Officer and Others, Ved Singh a Pradhan of a Gaon Sabha was removed by an Assistant Sub-Divisional Officer, exercising the powers of the State Government u/s 95 (1) (g) (iii) of the U. P. Panchayat Raj Act. Being aggrieved by the aforesaid order of removal, Ved Singh filed a petition under Article 226 of the Constitution, before the High Court, and obtained the following interim orders:--

"Issue notice. Let an ad interim order issue staying operation of the order made by respondent No. 1 dated 26-5-59."

Under the law, a person who has been removed from the office of Pradhan is disentitled for being re-elected and re-appointed to that office, for a period of 5 years. However, on the basis of the interim order, quoted above, Ved Singh sought re-election. The Election Tribunal set aside his election on the ground that notwithstanding the interim order passed by the High Court, as Ved Singh had been removed from the office of Pradhan, he was not qualified to seek re-election. Ved Singh challenged that order by means of another petition under Article 226 of the Constitution. While dealing with that petition this Court observed as follows :--

"Coming to the other appeal concerning the order passed by the Election Tribunal setting aside the appellant's election, we find that it was rightly set aside because the appellant was unconditionally disqualified and remained disqualified notwithstanding the ad interim order of stay of operation. What was stayed was only operation of the order of removal; the order itself was not deemed not to exist. The ad interim order was prospective; what was further required to be done, or what could further be done, was not to be done. Only what remained to be done was stayed, not the effect of what had already come into existence. The

removal was the immediate effect of the order and nothing was required to be done to bring it about. As soon as the order was passed the appellant stood removed and as soon as he was removed he became disqualified. The disqualification was simultaneous with the removal; it was the automatic consequence of the removal. His being subject to the disqualification was the effect of law and it was not open to this Court without infringing the law to say that he would not remain subject to the disqualification during the pendency of the writ petition.

Actually this Court did not order that he would not remain subject to the disqualification. Consequently he could not contend that by virtue of the stay of the operation of the order the disqualification which was automatic also remained suspended. The disqualification was for a fixed period of five years and had to remain in force for all the five years and could not remain in force for a day longer or for a day less. This also shows that it was not possible for any authority, even this Court, either to curtail the period of disqualification or to suspend it. What was really stayed by this Court was execution of the order of removal, the order of removal remained intact but any act to be done on account of the order of removal was prohibited from being done. The disqualification was not an act to be done at all; it was, as we said above an automatic legal effect of the order. Therefore, the appellant remained subject to the disqualification in spite of the interim order and could not offer himself for election."

Proceeding further the learned Judges expressed the view that when on a dismissal of the petition for a writ, the interim order was vacated, it did not have retrospective effect and it could not be urged that the interim order would be deemed not to have been passed at all.

8. Thus we find that both these Division Benches consistently take the view that if by means of an interim order, this Court stays operation of the impugned order, it merely prohibits something to be done in consequence of that order in future. It does not have effect of doing away with the legal effect which has already flown from it. It may be that if something is done in contravention of the stay order it may be ignored from consideration. Moreover, such an order if vacated does not stand vacated with retrospective effect and it cannot be deemed as if the order had never been passed.

9. Let us now apply the aforementioned principles to the facts of the present case. As soon as the Election Tribunal set aside the election of Nathu Lal and declared a casual vacancy, the legal effect of that order was that Nathu Lal ceased to be a member of the Board and could not in law act as such member. Accordingly, applying the principle that an interim order passed by this Court cannot provide a legal basis for an otherwise illegal act, we find that in this case, as it was ultimately held that Nathu Lal's election was illegal, he was not competent to act as the member of the Municipal Board and any interim order passed by this Court could not provide a legal basis for the claim of Nathu Lal to act as such member. Facts of Abdul Qayum's case, (1963) 7 F LR 30 (All.)

(supra) decided by this Court are quite distinguishable. In that case in order to be legally effective the suspension orders passed by the Government, had to be communicated to the members concerned. However, before those orders could be so communicated, the High Court suspended their operation, thereby prohibiting any further action under those orders. It was, therefore, not open to the State Government to communicate its orders to the members concerned. So long as the suspension orders were not communicated to the members, in law, they continued to be the members of the Board and could function as such members. In the circumstances, their functioning as members of the Board was quite legal. That was not a case where Narottam Saran and Radhey Shyam had actually ceased to be members of the Board and were deemed to be such members on the basis of any interim order, passed by the Court. In other words, the interim order passed by this Court did not purport to provide a legal basis for any illegal Action of the two members, who so long as the suspension orders were not served upon them were legally competent to function as such members.

10. In the case before us, we find that it cannot be disputed that the effect of the order passed by the Election Tribunal setting aside Nathu Lal's election was that, in Law, he ceased to be a member of the Board. In the circumstances, his continued functioning as member of the Board could not be considered to be legal. The interim order passed by this Court, therefore, could not provide a basis for legalising his action of participating in the meeting held on 16th September, 1973.

11. Learned Advocate-General appearing for Nathu Lal then contended that under Article 226 of the Constitution, this Court has ample jurisdiction to issue, during the pendency of a writ petition, interim writs. It can issue positive direction to various officers and persons which have to be obeyed. Viewed in this light, one would find that the interim order dated 16th July, 1973, in writ petition No. 4089 of 1973 was made with a view to enable Nathu Lal to function as member of the Board. The interim order should, therefore, be construed as an interim direction to all concerned to permit Nathu Lal to act as a member of the Board, notwithstanding that his election had been set aside. So long as the interim order stood, the officer presiding over the meeting held on 16th September, 1973 could not disallow Nathu Lal from participating in the meeting. Nathu Lal derived his authority to function as member of the Board under the directions issued by this Court in exercise of its powers under Article 226 of the Constitution. In the circumstances, participation of Nathu Lal in the meeting held on 16th September, 1972 could not be said to be unauthorized. Even if, for argument's sake, it be accepted (we do not propose to express any opinion on this point) that this Court can issue directions of the nature as contended by the learned Advocate-General, but then the directions issued by the Court in any particular case, will have to be interpreted in the light of the facts and circumstances of that case. If in the writ petition filed by Nathu Lal it was open to the High Court to issue a direction of the type mentioned by the Advocate-General, it was equally open to it to issue interim directions or writs in the writ

petition filed by the present petitioner. True nature of the effect to interim directions issued by the High Court would emerge only on a combined reading of the directions issued in both the cases. If, however, it is found that the subsequent direction of the court runs counter to the direction issued by it earlier, the subsequent direction will supersede the earlier one.

12. On 16th July, 1973, this Court passed an interim order in writ petition No. 4089 of 1973, staying the operation of the order, setting aside Nathu Lal's election and as urged by the learned Advocate-General, it may, for purposes of arguments, be construed as a direction authorizing Nathu Lal to perform the functions of a member of the Municipal Board. When the present petitioner made an application for being impleaded as a party in that petition, it should, in case the interim writ or the final writ to be issued in that case was going to affect his interest or legal rights, normally have been allowed. However, when that application was opposed and rejected on the ground that the petitioner was not a necessary party to those proceedings, it meant that at that stage the High Court clearly indicated that the directions contained in the interim order passed by it in Nathu Lal's writ petition, were not to affect any right of the petitioner. In the context, the interim order dated 16th July, 1973, could merely be construed as a direction enabling Nathu Lal to act as a member, subject to the condition that it would not, as against the petitioner, clothe "Nathu Lal with any legal authority so as to affect petitioner's rights. Moreover, subsequently, the petitioner himself filed the writ petition from which the present appeal arises and made a request that it be directed that the meeting scheduled to be held on 16th September, 1973, may not take place. In that connection this Court made an order to the effect that the meeting for considering the motion of non-confidence may take place on 16th September, 1973, but its result would not be announced. This obviously meant that the court intended that in case it was found that Nathu Lal was not entitled to participate in the meeting and for that reason the proceedings got vitiated its result would not be announced. In other words, that meeting would be considered to be invalid. If on the other hand the writ petition was ultimately dismissed, the result could be announced. It is obvious that this direction, was issued for protecting actual legal rights of both the parties and not for conferring upon a party a right which he did not possess. Even if some additional right had been conferred on Nathu Lal under this Court's order dated 16th July, 1973, that stood modified by subsequent orders, the necessary implication of which was that validity of Nathu Lal's participation and its effect on the meeting held on 16-10-73 would depend upon the final outcome of the two writ petitions. It is therefore not open to Nathu Lal now to contend that as he participated in the meeting held on 16th September, 1973 on the strength of the interim order dated 16th July, 1973, it is not open to the petitioner to question the validity of the motion of non-confidence on the ground that he was not entitled to participate in it,

13. Learned Advocate-General, then relied upon Section 113 (2) of the U. P. Municipalities Act which runs thus:--

"No disqualification, or defect in the election, nomination or appointment, of a person acting as a member of a Board or of a committee appointed under this Act, or as the (President or the Chairman, as the case may be) of a meeting of a Board or of such committee, shall be deemed to vitiate any act or proceeding of the Board or of the committee, if the majority of the persons present at the time of the act being done, or proceedings being taken, were qualified and duly elected (or nominated) members of the Board or committee."

He contends that even if Nathu Lal was disqualified, as is being claimed by the petitioner, his case, in substance, is that the proceedings in the meeting held on 16th September, 1973 were vitiated because a person who was not qualified to act as a member participated in it. As provided in Section 113 (2) of the Municipalities Act the resolution passed at that meeting would not be vitiated and the same cannot be quashed. In our opinion, provisions of Section 113 (2) apply to only such cases where a person bona fide acts as a member of the Board on the authority of his election, nomination or appointment etc. but subsequently it is found or held by a competent authority that there was some disqualification or defect in his election, nomination or appointment. In our opinion, this section does not apply to a case where a person participates in the meeting of the Board or its committee even after his election, nomination or appointment has been set aside in accordance with Law. In this case after the election of Nathu Lal had been set aside, he could not participate in the meeting of the Board. As mentioned above, neither did the interim order passed by this Court on 16th July, 1973, clothe him with a legal authority to participate in the meeting nor does Section 113 (2) cure the defect arising therein.

14. It is not disputed that Nathu Lal was one of the persons who voted in favour of the motion of no-confidence and that the motion would have been lost if his vote had not been taken into consideration. The no-confidence motion passed in the meeting held on 16th September, 1973 and communicated to the petitioner on 22nd November, 1973, cannot, in the circumstances, be said to have been validly passed.

15. The appeal, therefore, succeeds and is allowed with costs. The judgment of the learned Single Judge is set aside and the writ petition filed by Ganga Prasad is allowed. The Impugned resolution passed in the meeting held on 16th September, 1973 and communicated to the petitioner on 22nd November, 1973, is quashed.